

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION – SIOUX CITY

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PEG BOUAPHAKEO et al., individually	)	No. 5:07-cv-04009 JAJ
and on Behalf Of Themselves and All	)	
Other Similarly Situated Individuals,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
TYSON FOODS, INC.	)	DEFENDANT'S AMENDED AND
	)	CORRECTED INSTRUCTION NO. 11
Defendant.	)	

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**COMES NOW** Defendant Tyson Foods, Inc. and files the attached amended and corrected version of its Instruction No. 11 previously submitted.

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**ATTORNEYS FOR DEFENDANT  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on **October 13, 2010**, I electronically filed the foregoing with the Clerk of Court using the ECF system which will send notification of such filing to the following:

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## FINAL INSTRUCTION NO. 11

(Amended and Corrected)

### Work

Federal law requires Tyson Foods to pay employees for all hours worked. You must decide whether Plaintiffs have proved that putting on, taking off and washing items is “work.” Work is any (1) physical or mental exertion, whether burdensome or not, (2) controlled or required by the employer and (3) pursued necessarily and primarily for the benefit of the employer and its business. Exertion is not required in circumstances where the employer requires the employee to report to the workplace at a certain time and the employee waits to be engaged.

### Authority

*IBP, Inc. v. Alvarez*, 546 U.S. 21, 25-28 (2005); *Tennessee Coal, Iron & R.R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 598 (1944); *Armour & Co. v. Wantock*, 323 U.S. 126, 133 (1944); *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944); *Reich v. ConAgra, Inc.*, 987 F.2d 1357, 1361 (8th Cir. 1993); *Reich v. IBP, Inc.*, 38 F.3d 1123, 1125 (10th Cir. 1994); *Smith v. Aztec Well Serv. Co.*, 462 F.3d 1274 (10th Cir. 2006)